

GAHC010239232017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4516/2017

KOTALGOORIE TEA ESTATE
P.O. MARIANI - 785634, DIST. JORHAT, ASSAM WHICH IS REP. BY ITS
SENIOR MANAGER.

VERSUS

THE STATE OF ASSAM and ANR.
REP. BY THE SECRETARY, DEPARTMENT OF LABOUR AND EMPLOYMENT,
ASSAM, DISPUR, GUWAHATI - 781006.

2:SRI DOMEN KARMAKAR
S/O LT. H. KARMAKAR R/O UNDER ASSAM COMPANY LTD. P.O. and P.S.
MARIANI
DIST. JORHAT
ASSAM- 78563

BEFORE
HON'BLE MR. JUSTICE NELSON SAILO

For the petitioner : Mr. B. Sarma. Advocate

For the respondent no.1 : Ms. U. Das, ...Addl. Sr. GA

For the respondent no.2 : Ms. A. Bhattacharya Advocate

Dates of hearing : 14.05.2024 & 21.05.2024

Date of Judgment : 21.05.2024

JUDGMENT AND ORDER

- 1.** Heard Mr. B. Sharma, learned counsel for the petitioner and Ms. U. Das, learned Additional Senior Government Advocate for the respondent no.1 and Ms. A. Bhattacharyya, learned counsel for the respondent no.2.
- 2.** By filing this writ petition, the petitioner has challenged the Award dated 09.08.2016 passed by the learned Labour Court, Dibrugarh in Reference Case No.5/2013, by which the petitioner was found to be not justified in dismissing the service of the respondent no.2 and was found to be entitled for reinstatement in service within 30 days from the date of the Award. Further, the period from the date of dismissal till his reinstatement was directed be treated as leave without pay and should count towards the length of service.
- 3.** Brief facts essential for disposal of the instant writ petition is that according to the petitioner, the respondent no.2 on 30.05.2012 drove the school bus of the Management bearing registration no. AS-03/7483 in a most negligent manner causing it to dash against the main gate of the factory and grievously injuring the gate security personnel, who later succumbed to his injuries. Due to this, the Senior Manager of the petitioner company filed Charge-sheet dated 12.06.2012 against the respondent no.2 charging him for disrupting the normal working of the factory as well as the Manager's office for more than 2 hours with malafide intention, in addition causing the death of Late Basu Keot and that the said act if proved, would amount to gross misconduct on the part of the respondent no.2 as per clause 10(a)(1), clause 10(a)(10) and clause 10(a)(11) of the Standing Orders in force in the estate. A written explanation was therefore sought from the respondent no.2 as to why disciplinary action should

not be initiated against him and he was suspended from duties with immediate effect until further orders.

4. The respondent no.2 submitted his representation on 15.06.2012 denying the charges stating that he performed his duty sincerely and diligently and there was no intention on his part to harm the normal work of the factory and prayed to condone his action. However, not being satisfied the petitioner served notice of inquiry to the respondent no.2 on 30.06.2012 intimating the date, time and venue of the proposed inquiry proceedings and also asked the respondent no.2 to submit his list of witnesses. Thereafter vide letter dated 08.10.2012 the respondent no.2 was intimated that a domestic inquiry was fixed for 30.10.2012 at the Garden Office of the Manager at 10:30 a.m. and one Mr. M.R. Barooah, Advocate, Jorhat would be the Inquiry Officer.

5. According to the petitioner, the inquiry was initiated by the Inquiry Officer, wherein two Observers were present from the side of the petitioner throughout the proceedings and the respondent no.2 was personally present as well. All the charges were explained to him in Assamese and he denied the same. The respondent no.2 also admitted receiving a copy of the Charge-sheet, list of witnesses prior to the inquiry and he brought one witness in support of his defence. On behalf of the Management Sri Siddhartha Chetia Pator, Sri Rupam Handique and Sri Baljit Singh Shekhon were examined as MW-1, MW-2 & MW-3 respectively. The respondent no.2 declined cross-examination the said witnesses and in his defence, he examined himself and his colleague Aman Karmakar. During the cross-examination of Sri Aman Karmakar, he gave a different story saying that the bus had a brake failure and because of which, he was shouting along with the driver. As per respondent no.2, he was totally silent about the

theory of brake failure. The Motor Vehicle Inspector Report exhibited as Exhibit-5 also did not disclose anything about the brake failure and instead certified that mechanically, the bus was in a roadworthy condition.

6. The Inquiry Officer after considering all the materials available came to the conclusion vide his report dated 15.11.2012 that the charges levelled against the respondent no.2 were proved beyond reasonable doubt and he forwarded the report to the Senior Manager of the Tea Estate.

7. Thereafter the respondent no.2 was furnished a copy of the Inquiry Report vide letter dated 01.12.2012 and was provided an opportunity to make a representation before the Management in writing by 08.12.2012. The respondent no.2 submitted his representation on 07.12.2012 explaining that on that fateful day while he was carefully driving the school bus, the gate Chowkidar Basu Keot suddenly came towards the bus negligently and although he tried to save him from the imminent danger but he failed and as a result, the bus dashed on the factory gate damaging it. He stated that it was not his intention for causing harm to anybody or property. He also stated that he did not have anything to say or oppose the charges against him and he having served the Management for about 27 years and in view of the he being the sole bread earner of his 6 (six) members family he requested sympathetic consideration. The petitioner not being satisfied with the representation dismissed the respondent no.2 from service w.e.f. 15.01.2013 vide communication dated 07.01.2013 (Annexure-VIII).

8. Thereafter the respondent no.2 filed an application for conciliation before the Assistant Labour Commissioner, Jorhat in the month of May, 2013 requesting

the intervention into the dispute by issuing notice to the Management for conciliation and settlement of the dispute. However, as nothing materialised from the application, the petitioner then filed an application under Section 2-A of the Industrial Disputes Act, 1947 (Act of 1947) before the Presiding Officer, Labour Court at Dibrugarh on 05.12.2013 for adjudication of the dispute relating to the dismissal of his service. The application was registered as Reference Case No.5/2013. The Labour Court thereafter issued notice to the opposite party and on appearance made by the petitioner as opposite party, the Labour Court proceeded to adjudicate the dispute by allowing the rival parties to lead their respective evidences. The respondent no.2 examined himself and one Sri Deben Patnayak in support of his case, while the petitioner examined three witnesses. The witnesses were also cross-examined by the other side and consequently, the Labour Court passed the impugned Award dated 09.08.2016 in the manner as already stated hereinabove.

9. Mr. B. Sharma, learned counsel for the petitioner submits that the Labour Court is not justified in coming to a finding that the principles of natural justice have been violated. He submits that throughout the domestic inquiry, the respondent no.2 had been participating and he was given all the opportunity to defend himself against the charge. Apart from examining himself and another witness, the respondent no.2 declined to cross-examine the witnesses of the Management. After the Inquiry Officer submitted his report, a copy of the same was furnished to the respondent no.2 giving an opportunity to make representation in writing on the findings of the Inquiry Officer. The respondent no.2 then submitted his representation stating that he had nothing to say or oppose the charges made against him. He stated that as he was serving the Management for long time and being the sole bread earner of the family, his

case may be considered sympathetically. He submits that the petitioner after considering the representation of the respondent no.2 and not satisfied with the same and considering the conduct of the respondent no.2, having lost confidence upon him, dismissed him from service. Therefore, the finding of the Labour Court vide the impugned Award that principles of natural justice has been violated is not correct.

10. The learned counsel further submits that the respondent no.2 during the domestic inquiry and in his representation dated 07.12.2012 did not have anything to say in the matter but surprisingly before the Labour Court, he took the plea that the principles of natural justice was not complied with in terminating him from service. He also stated that the gate Chowkidar at the time of the accident was in drunken condition. He submits that the same was not even the case of the respondent no.2 before the domestic inquiry. It is therefore clear that the respondent no.2 has tried to improve his case by coming up with a different version before the Labour Court. He submits that the application submitted by the respondent no.2 was under Section 2-A of the Act of 1947 and Section 11(8) of the same Act provides that the Labour Court shall be deemed to be a Civil Court for the purpose of Sections 345, 346 and 348 of the Cr.P.C. Therefore, the principles of the Code of Civil Procedure, 1908 (CPC) will apply to the proceedings before the Labour Court. He therefore submits that the respondent no.2 has gone beyond his pleadings while leading his evidence. Therefore, facts not pleaded in his plaint cannot be acted upon in any manner

11. The learned counsel also submits that merely because the Criminal Court has acquitted the respondent no.2, the same cannot be the ground for discharging him from the charges levelled in the domestic inquiry in view of the

fact that the criteria for proving the charges in a criminal case and in a domestic inquiry are different. In a criminal proceeding, the charges are to be proved with proof beyond reasonable doubt, whereas in a domestic inquiry, charges can be proved even by preponderance of probability. He therefore submits that the impugned Award passed by the Labour Court should be set aside. In support of his submission, the learned counsel relies upon the following authorities:-

- (i) *Mokshada Sharma Kataki vs. Assam Gramin Vikash Bank & Others*, 2022 (5) GLT 91,
- (ii) *Management of Bogapani Tea Estate vs. Secretary, Assam Chah Mazdoor Sangha*, 2023 (5) GLT 850 and
- (iii) *State of Uttarakhand & Another vs. Mandir Sri Laxman Sidh Maharaj*, (2017) 9 SCC 579.

12. Ms. A. Bhattacharyya, learned counsel for the respondent no.2, on the other hand submits that there is nothing wrong with the Award made by the Labour Court. The learned Counsel by referring to the cross-examination of the witnesses examined by the petitioner before the Labour Court, more particularly MW-1, Sri Siddhartha Chetia Pator submits that it is clear from his deposition that when the inquiry was going on and the statements of the Management witness was being recorded, the respondent no.2 was outside the inquiry room and only the Inquiry Officer and the witness being examined knew what was recorded. She therefore submits that this clearly shows that the inquiry was conducted in a perfunctory manner since the respondent no.2 was not present when the witnesses of the petitioner Management was being recorded. Therefore, the Labour Court was right in coming to its finding in this regard. In

support of her submission, the learned counsel relies upon the following authorities :

- (i) *M/s Khardah & Co. Ltd. vs. The Workmen, AIR 1964 SC 719* and
- (ii) *State of Mysore & Others vs. Shivabasappa Shivappa Makapur, AIR 1963 SC 375.*

13. The learned counsel further submits that the High Court in exercise of its powers under Article 226 of the Constitution of India may not substitute its judgment over that of the Labour Court since the High Court is not an Appellate Court over Tribunals constituted under Special Legislation to resolve dispute of a kind qualitatively different from ordinary civil disputes. Therefore, the High Court may restrain itself from interfering with the order passed by the Labour Court unless the same is a case of patent illegality or perversity. In support of her submission, the learned counsel relies upon the following authorities:-

- (i) *General Manager, OIL & Natural Gas Commission, Silchar vs. Oil & Natural Gas Commission Contractual Workers Union, (2018) 12 SCC 275,*
- (ii) *Calcutta Port Shramik Union vs. Calcutta River Transport Association & Others, 1988 (Supp) SCC 768* and
- (iii) *Sadhu Ram vs. Delhi Transport Corporation, (1983) 4 SCC 156.*

14. The learned counsel further submits that the respondent no.2 was acquitted by the Criminal Court against the charges which were similar to the charge made against him in the domestic inquiry. Since the acquittal was not on technical grounds and considering the common charge, the respondent no.2 should be discharged from the charges made against him in the domestic

inquiry as it would be unjust, unfair and rather oppressive to allow him to be punished as per the findings of the domestic inquiry. In support of her submission, the learned counsel relies upon the following authorities:-

- (i) *Ram Lal vs. State of Rajasthan & Others, (2024) 1 SCC 175,*
- (ii) *G.M. Tank vs. State of Gujarat & Others, (2006) 5 SCC 446 and*
- (iii) *Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Another, (1993) 3 SCC 679.*

Ms. A. Bhattacharyya, learned counsel for the respondent no.2 thus submits that there is nothing wrong of the Award of the Labour court and the same may be upheld.

15. Ms. U. Das, learned Additional Senior Government Advocate submits that the respondent no.1 is only formal respondent and that she has nothing much to submit.

16. I have heard the submissions made by the learned counsel for the rival parties and I have perused the materials available on record.

17. As may be noticed, against the order of dismissal dated 07.01.2013, the respondent no.2 submitted an application under Section 2-A of the Act of 1947 before the Labour Court at Dibrugarh. Upon registering the same as Reference Case No.5/2013, the Labour Court proceeded to adjudicate the matter by issuing notice to the petitioner and by allowing the parties to lead their respective evidence.

18. Section 11A of the Act of 1947 provides as follows :

“11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter”.

As can be seen from the above abstract, when a workman is discharged or dismissed, the Labour Court on being referred the dispute, can adjudicate the matter by initiating proceedings. In the event, the Labour Court is satisfied that the order of discharge or dismissal was not justified, it may by its Award set aside the same and direct reinstatement of the workman with certain terms and conditions, as it thinks fit. The proviso however provides that in a proceeding under the section, the Labour Court shall rely upon the materials on record and shall not take any fresh evidence in relation to the matter.

19. In the present case, the Labour Court had allowed the parties to lead their evidence by examination of their respective witnesses. During the domestic

inquiry, the petitioner examined three witnesses, whereas before the Labour Court one of the witnesses, i.e. Sri Baljit Singh Shekhon was not examined and instead the Inquiry Officer was examined. Likewise the respondent no.2 examined himself again before the Labour Court but the other witness which was examined in his defence before the domestic inquiry was not examined and instead one Sri Deben Patnayak was examined by him.

20. Be that as it may, what can be seen is that fresh evidence was adduced by both the parties before the Labour Court and the witnesses were also duly cross-examined by the rival parties. It may further be seen that the respondent no.2 besides giving some explanation against the charge has hardly taken any defence in the domestic inquiry and had also not cross-examined the witnesses of the Management. Further, he has also not state anything in his defence in the representation submitted by him against the report of the Inquiry Officer. However, before the Labour Court, his evidence was that the gate keeper was in a drunken state when the accident happened. By taking such a stand, he tried to establish his innocence on the charge that was framed against him. Despite that the Labour Court at paragraph-32 of the Award came to a finding that the basic principles were not followed in the process of domestic inquiry. In other words, according to the Labour Court, the Management while conducting the domestic inquiry did not follow the principles of natural justice and as such, the findings of the inquiry cannot be accepted and consequently directed reinstatement of the respondent no.2. However, it may be seen that since the Labour Court has proceeded with the adjudication of the dispute by allowing the parties to present their respective case and to lead their evidence in support of their respective claim and yet the conclusion made to the effect that the

domestic inquiry did not follow the principles of natural justice and therefore, the findings were vitiated in the considered view of this Court cannot be accepted. The Labour Court having adjudicated the matter by allowing the parties to lead their evidence ought to have considered the dispute on merit its entirety instead of confining itself on the issue of violation of principles of natural justice. Therefore, in the considered view of this Court, it is a fit case for remanding the case back to the Labour Court for re-consideration on the basis of the materials available on record.

21. Accordingly, the impugned Award dated 09.08.2016 is hereby set aside and the matter is remanded back to the Labour Court, Dibrugarh for fresh consideration in accordance with law and in terms of the observations made hereinabove. The parties are directed to appear before the Labour Court, Dibrugarh on 12.06.2024, whereafter the Labour Court, Dibrugarh after giving due opportunity of hearing to the rival parties shall consider and dispose of the Reference in accordance with law as expeditiously as possible and preferably, within a period of 6 (six) weeks from the date of appearance of the parties.

22. Having come to the above finding and conclusion, reference to the authorities relied upon by the parties is found to be not necessary.

23. With the above observations and directions, the writ petition stands disposed of. Registry shall send back the LCR forthwith.

JUDGE

Comparing Assistant